
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

DIAMOND G RODEOS, INC, a Utah Corporation; STEVE GILBERT, an individual; and CYNDI GILBERT, an individual,

Plaintiffs,

v.

BRIAN JAMES GIFFORD, an individual; and DOES 1-10,

Defendants.

AND RELATED COUNTERCLAIMS

**MEMORANDUM DECISION AND
ORDER DENYING REQUEST FOR
DEFAULT JUDGMENT**

Case No. 4:22-cv-00089-DN-PK

District Judge David Nuffer
Magistrate Judge Paul Kohler

Defendant Brian Gifford (“Gifford”) filed Affidavit of Brian Gifford in Support of Entry of Default Judgment (“Affidavit”).¹ In the Affidavit, Gifford argues he is entitled to a default judgment on his counterclaims against Steve Gilbert and Cyndi Gilbert.² Gifford additionally filed a Notice of Judicial Interference with Clerk’s Ministerial Duty Under Rule 55(a) (“Notice”).³ In the Notice, Gifford argues he is entitled to default judgment and asserts that this Court’s internal instruction to the clerk of the court not to enter default judgment as Gifford has repeatedly demanded was judicial interference.⁴ Gifford attaches a string of five emails to the clerk’s office where he repeated his demand that the clerk enter default judgment on his behalf.⁵ Plaintiffs Diamond G. Rodeos, Inc., Steve

¹ [Docket no. 90](#), filed October 30, 2024.

² *Id.* at 1-4.

³ [Docket no. 93](#), filed November 6, 2024.

⁴ *Id.*

⁵ [Docket no. 93-1](#), filed November 6, 2024, at 1-6.

Gilbert, and Cyndi Gilbert filed Plaintiffs' Response to Gifford's Affidavit for Default.⁶ Gifford's requested relief is DENIED as explained below.

Gifford is not entitled to default judgment. Gifford's counterclaims were dismissed in their entirety by the Memorandum Decision and Order Adopting Report and Recommendation ("Order").⁷ In the Order, default judgment was entered *against* Gifford.⁸ There are no live claims in this matter for which Gifford could even potentially seek default judgment. And even if Gifford had live claims, he is not entitled to an entry of default under Federal Rule of Civil Procedure Rule 55(a), nor is he entitled to an entry of default judgment under Federal Rule of Civil Procedure 55(b). Gifford has additionally failed to follow the procedures of DUCivR 55-1. Rule 55 default is appropriate when parties are not participating or responding in a case. To the contrary here, Plaintiffs have vigorously participated and obtained a default judgment against Gifford on their claims and dismissal of Gifford's claims against them. Gifford is not entitled to his requested relief.

ORDER

IT IS HEREBY ORDERED that all relief requested in the Affidavit⁹ and the Notice¹⁰ is DENIED.

Signed November 11, 2024.

BY THE COURT



David Nuffer
United States District Judge

⁶ Docket no. 94, filed November 9, 2024.

⁷ Docket no. 78, filed October 3, 2024.

⁸ *Id.* at 2-3.

⁹ Docket no. 90, filed October 30, 2024.

¹⁰ Docket no. 93, filed November 6, 2024.